

IN THE UNITED STATES COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff,

v.

[2] OSVALDO DÍAZ-PABÓN

Defendant.

CRIM. No.: 96-22 (SCC)

OPINION AND ORDER

Pending before the Court is Defendant Osvaldo Díaz-Pabón's ("Defendant Díaz-Pabón") *pro se* request at Docket No. 351 for additional documents to be transmitted to the First Circuit Court of Appeals ("First Circuit") in order to supplement his appeal concerning the denial, *see* Docket No. 341, of his motion pursuant to the First Step Act, *see* Docket No. 339. While the Government has not filed a response to this request, the Court finds that it can issue its determination

regarding this matter in view of the First Circuit's Judgment on this very same day, *see* Docket No. 365, regarding the appeal addressed by Defendant Díaz-Pabón in his request. For the foregoing reasons, Defendant Díaz-Pabón's request at Docket No. 351 is **MOOT**.

I. Background

On April 24, 2020, Defendant Díaz-Pabón filed a *pro se* motion to reduce his sentence under 18 U.S.C. 3582(c)(1)(A) in view of the First Step Act of 2018 ("Motion to Reduce Sentence"). *See* Docket No. 339.¹ On May 1, 2020, the Government opposed the same ("Opposition"). *See* Docket No. 340. Shortly thereafter, the Court entered a line order denying Defendant Díaz-Pabón's motion at Docket No. 339 for the reasons noted in the Government's Opposition. *See* Docket No. 341.

The Court's denial of his Motion to Reduce Sentence did

¹ The *pro se* motion is dated April 21, 2020. *See* Docket No. 339 at 5. However, for the sake of uniformity, the Court will refer to the date that appears on the record next to the docket entry which is April 24, 2020.

not stop Defendant Díaz-Pabón from filing a “Notice of Appeal”² on May 26, 2020. *See* Docket No. 343³. There, he advanced his intention to appeal the Court’s denial and included a request for the Court to transmit all related documents necessary for his appeal to move forward before the First Circuit. *See id.* On June 3, 2020, the Clerk of the Court certified and transmitted the abbreviated record to the First Circuit. *See* Docket No. 346. Specifically, the following documents were included as part of the record on appeal: (1) Docket No. 341 (Court’s denial of the Motion to Reduce Sentence); and (2) Docket No. 343 (Defendant Díaz-Pabón’s “Notice of Appeal”). *Id.*

On June 8, 2020, Defendant Díaz-Pabón’s appeal of the Court’s denial of his Motion to Reduce Sentence was assigned

² On June 2, 2020, Defendant Díaz-Pabón also filed a Motion for Reconsideration regarding the denial of his Motion to Reduce Sentence. *See* Docket No. 345. The Motion for Reconsideration was denied by the Court on July 13, 2020. *See* Docket No. 349.

³ The motion is dated May 18, 2020. *See* Docket No. 343. But as stated at *supra* note 1, here, the Court refers to the date that appears on the record next to the corresponding docket entry.

case number 20-1572 by the First Circuit. *See* Docket No. 347. The First Circuit, via Judgment entered on May 3, 2021, affirmed the Court's denial of the Motion to Reduce Sentence. *See* Docket No. 365. Having reviewed the pertinent procedural backdrop as it concerns Defendant Díaz-Pabón's request at Docket No. 351, the Court proceeds to evaluate said request.

II. Analysis

In his request, Defendant Díaz-Pabón argues that in addition to transmitting Docket Nos. 341 and 343, the Court should have also transmitted Docket Nos. 344 to 349 as they pertain to his appeal. The Court finds that it was under no obligation to transmit additional documents as part of the record on appeal other than those at Docket Nos. 341 and 343. A review of First Circuit Local Rule 11(b) reveals as much:

The district court will not transmit the full record except upon request of the circuit clerk. Rather, the district court will transmit to the circuit clerk electronically a copy of the notice of appeal, the order(s) being appealed, and a certified copy of the district court docket report

in lieu of transmitting the entire record. Sealed documents will not be included in this abbreviated electronic record. Rather, any sealed documents or sealed docket reports/entries will be transmitted to the circuit clerk in hard copy whether or not electronically available. In addition, any papers and exhibits which are not electronically available will also be transmitted to the circuit clerk. The entire electronic district court record is available to the court of appeals whether or not individual documents are transmitted as part of the abbreviated electronic record or later supplemented.

See 1st Cir. L.R. 11(b).

Because the “Notice of Appeal” in addition to the order that was appealed were transferred in compliance with First Circuit Local Rule 11(b) and the record does not show that the First Circuit Clerk requested for the entire record to be transmitted, there was no need for additional documents to be transmitted since the First Circuit has access to the totality of the Court’s electronic record of this case. While the Court could have denied Defendant Díaz-Pabón’s request given

that First Circuit Local Rule 11(b) was not contravened and the Court was under no obligation to transmit additional documents, in light of the First Circuit's Judgment entered on this same day affirming the Court's denial of the Motion to Reduce Sentence, *see* Docket No. 365, the Court deems Defendant Díaz-Pabón's request as **MOOT**.

III. Conclusion

In light of the above, Defendant Díaz-Pabón's request at Docket No. 351 is **MOOT**.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 3rd day of May, 2021.

S/ SILVIA CARREÑO-COLL
UNITED STATES DISTRICT COURT JUDGE